

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 1, 2014 at 1:30 p.m.

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1. [10-23577](#)-E-11 GLORIA FREEMAN CONTINUED OBJECTION TO DEBTOR'S
WFH-36 CLAIM OF EXEMPTIONS
6-21-13 [[784](#)]

CONT. FROM 5-28-14, 3-19-14, 2-27-14, 12-12-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 11 Trustee, and Office of the United States Trustee on June 21, 2013. By the court's calculation, 69 days' notice was provided. 28 days' notice is required.

The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Hearing on the Objection to Claim of Exemption is xxxx.

JULY 1 2014 HEARING

At the hearing,

MAY 28, 2014 HEARING

The Parties reported that this matter may be resolved as part of a larger settlement between the Trustee/Plan Administrator and Laurence Freeman, and between the Trustee/Plan Administrator and Gloria Freeman. The court continued the hearing to allow for further negotiations.

MARCH 19, 2014 HEARING

At the hearing, the court continued the hearing to allow MacDonald Fernandez, LLP, proposed counsel to substitute in for Debtor on limited issues. The court approved substitution of counsel for limited scope of representation on April 1, 2014. Dckt. 1395.

FEBRUARY 27, 2014 HEARING ON DEBTOR'S MOTION TO COMPEL

At the hearing on Debtor's Motion to Compel DCN GMF-19 (held in

conjunction with the Plan Administrator's Motion to Abandon WFH-43), the parties agreed that the issues arising from this Objection to Exemptions so intertwined with the pending adversary (Case No. 13-2027) that the two should be conducted in conjunction with the testimony presented once. See Official Transcript, Dckt. 1377.

DECEMBER 12, 2013 HEARING

At the hearing the Trustee confirmed that there remains only one exemption as set forth in the Fifth Amended Schedule C for which there is an exemption, which exemption is described as follows:

2003 - 2005 tax refunds of appx. \$52,857.09 resulting from overpayment by Non-filing spouses corporation; this refund and all other refunds were disposed of pursuant to the July 19, 2012 settlement in this case - already given to non-filing spouse no value to the estate; debtor properly exempted her interest in the taxes with all remaining b(5) wildcard

C.C.P. § 703.140(b)(5)

Amount Claimed as Exempt: \$19,899.06

Value of Asset: \$0.00

The court issued an order which (1) determines that the only remaining objection to exemptions, for those as stated in the Fifth Amended Schedule C, is for the 2003-2005 tax return and (2) continuing the hearing, as the Objection is intertwined with the pending adversary proceeding between the Plan Administrator and Laurence Freeman, which includes whether the remaining asset (a tax refund) for which the Plan Administrator objections to the claim of exemption.

2. [10-23577-E-11](#) GLORIA FREEMAN
[13-2027](#)
FREEMAN V. FLEMMER

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-29-13 [[1](#)]

Plaintiff's Atty: Craig A. Simmermon, Barry H. Spitzer
Defendant's Atty: Daniel L. Egan
Third Party Defendant's Atty: Reno F.R. Fernandez III

Adv. Filed: 1/29/13
Answer: 2/27/13

Counterclaim Filed: 2/27/13
Answer to Counterclaim:
3/20/13 [Laurence Freeman]
3/27/13 [Gloria Freeman]
4/24/13 [Gloria Freeman - First Amended]

Nature of Action:
Declaratory judgment

Notes:

Continued from 5/28/14 to be conducted at the same time as the hearing on the motion to approve the settlement.

JULY 1, 2014 STATUS CONFERENCE

At the July 1, 2014 Status Conference -----.

The Parties represented to the court at the May 28, 2014 Status Conference that they believed the matter had been settled. Further, they would be filing a motion in the Gloria Freeman bankruptcy case to approve the settlement. No motion has been filed and it appears that this Adversary Proceeding, notwithstanding the court having made a competency determination and Laurence Freeman being represented by an experienced bankruptcy and litigation counsel, that this Adversary Proceeding appears adrift in the doldrums, the regal albatross of resolution seemingly having been shot and hanging about the necks of the parties as they descend further into the litigation abyss. FN.1.

FN.1. As analogized from Samuel Taylor Coleridge's *The Rime of the Ancient Mariner*, "Ah! well-a-day! what evil looks; Had I from old and young!
Instead of the cross, the Albatross About my neck was hung."

3. 14-26135-E-13 PEDRO NAVARRO
FWK-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-13-14 [[11](#)]

U.S. BANK NATIONAL
ASSOCIATION VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se), Chapter 13 Trustee, and Office of the United States Trustee on June 13, 2014. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion for Relief From the Automatic Stay is granted.

U.S. Bank, National Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3363 Neighbor Lane, Lincoln, California (the "Property"). The moving party has provided the Declaration of Fred Kaiser to introduce evidence as a basis for Movant's contention that Pedro Navarro ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on April 22, 2014. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Placer Counter Superior Court, on June 4, 2014,

however no further state court activities have been taken as a result of the chapter 13 filing herein. Exhibit B, Dckt. 15.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership and a Complaint for Unlawful Detainer After Trust Deed Foreclosure. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The Movant also states that Debtor has previously filed two separate cases in an effort to stay U.S. Bank, N.A.'s efforts to obtain possession of the property:

a) Case No. 14-20346-A-13J filed by Teresa Navarro (debtor's spouse) on January 15, 2014; dismissed February 3, 2014 for failure to file documents. Teresa Navarro is not a debtor in this proceeding but claims a possessory interest in the subject property.

b) Case No. 14-24744-B-7 filed by Pedro Navarro on May 5, 2014; dismissed May 23, 2014, for failure to file documents. FN.1.

The Motion is granted. Movant has provided sufficient evidence to modify the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1). For purposes of this motion only, the evidence shows that Movant has the current possession right to the Property and is being deprived of exercising its rights to so obtain possession due to the automatic stay in this third bankruptcy case filed by the Debtor.

The court shall issue an order terminating and vacating the automatic stay to allow U.S. Bank, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 3363 Neighbor Lane, Lincoln, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by U.S. Bank, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow U.S. Bank and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 3363 Neighbor Lane, Lincoln, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.

4. [13-34540-E-13](#) LORI SMYLIE
JMO-2 Richard Kwun

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-29-14 [[44](#)]

GREENSTONE COUNTRY OWNERS
ASSOCIATION VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 29, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is denied.

Greenstone Country Owners Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2746 Countryside Drive, Placerville, California (the "Property"). Movant has provided the Declaration of Mike Freer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Freer Declaration states that there is one (1) post-petition default in the payments on the obligation secured by the Property, with a total of \$800.00 in post-petition payments past due. The Declaration also provides evidence that the post-petition and pre-petition payments in default total \$10,305.11. Movant also argues that the total debt secured by this property is determined to be \$613,000, as stated in the Freer

Declaration and Schedule D filed by Lori Smylie ("Debtor"). The value of the Property is determined to be \$410,200.00, as stated in Schedules A and D filed by Debtor.

TRUSTEE'S RESPONSE

Trustee responds, stating that the debtor is current under the confirmed plan, with Debtor paying a total of \$38,880.00 to date. No payments have been made to unsecured creditors in this case to date and they are to receive no less than \$3,350.00.

DEBTOR'S OPPOSITION

Debtor filed an opposition, stating that Debtor paid the post-petition payment of \$800.00 for the semiannual HOA fee to Movant on June 4, 2014.

DISCUSSION

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

However, it appears debtor has made up the missing payment due to Movant and she is current under her Chapter 13 plan of reorganization. Therefore, cause does not exist to grant relief from the automatic stay.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Greenstone Country Owners Association having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

5. [09-31366-E-13](#) JUAN LOPEZ AND ROSALINA MOTION FOR RELIEF FROM
PD-1 MACIEL AUTOMATIC STAY
Peter G. Macaluso 6-2-14 [[154](#)]

CHAMPION MORTGAGE COMPANY
VS.

Final Ruling: No appearance at the July 1, 2014 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 2, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Champion Mortgage Company ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5925 19th Avenue, Sacramento, California (the "Property"). Movant has provided the Declaration of Tiffany Dearmon to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Dearmon Declaration states that there are 3 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$12,464.89 in post-petition payments past due. The Declaration also states that there are 5 tax defaults for the Property putting it at risk of becoming encumbered. Debtor has not reimbursed Movant for its advancements. Including the advancements that have not been repaid the total amount owed under the Note is approximately \$250,495.96.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$270,495.96 (including \$250,495.96 secured by Movant's first deed of trust), as stated in the Dearmon Declaration and Schedule D filed by Juan

Lopez and Rosalina Maciel ("Debtor"). The value of the Property is determined to be \$250,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Champion Mortgage Company having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Champion

Mortgage Company, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 5925 19th Avenue, Sacramento, California.

No other or additional relief is granted.

6. [14-24266-E-13](#) MAYLENE RAMAGOZA
JCW-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-28-14 [[20](#)]

FEDERAL HOME LOAN MORTGAGE
CORPORATION VS.

Final Ruling: No appearance at the July 1, 2014 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 29, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Federal Home Loan Mortgage Corporation ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8121 Port Royale Way, Sacramento, California (the "Property"). The moving party has provided the Declaration of Bounlet Louvan to introduce evidence as a basis for Movant's contention that Maylene Ramagoza ("Debtor") do not have an

ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on December 9, 2013. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant seeks to commence an unlawful detainer action. Movant has noted this is Debtor's third attempt to file Bankruptcy since May 3, 2013.

Movant has provided a properly certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. (Exhibit 1, Dckt. 23). The Trustee's Deed Upon Sale was perfected on 12/18/2013 within 15 days of the sale, when it was filed with the Sacramento County Recorder. (Exhibit 1 & 2, Dckt. 23). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Trustee's Response

The Trustee has indicated that the Debtor is delinquent under the proposed plan and has paid \$0.00 to date. This information is verified by the Declaration of Ed Weedman. (Dckt. 26 & 27). FN.1.

FN.1. The court notes that the Debtor did not appear at their Meeting of Creditors on June 5, 2014 held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343.

The court shall issue an order terminating and vacating the automatic stay to allow Federal Home Mortgage Corporation, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 8121 Port Royale Way, Sacramento, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Federal Home Loan Mortgage Corporation, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Federal Home Mortgage

Corporation and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 8121 Port Royale Way, Sacramento, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.